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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128

DOCKET FILE COPY ORIGINAL

MOTION TO FILE COMMENTS ONE DAY LATE

Pursuant to Section 1.46(b) of the Commission's rules, 47 C.F.R. § 1.46(b), the International Telecard Association ("ITA"), by its attorneys, respectfully submits this motion to file comments in this docket one day late. Mechanical photocopying difficulties delayed the timely submission of the attached comments, which were delivered to the Secretary at 5:35 p.m. on July 1, 1996, the date due for filing.

All Commission Staff, including the Common Carrier Bureau's Enforcement Division, have been timely served with the attached comments. The Commission's inclusion of the comments in the record is in the public interest, will not prejudice interested parties and will provide input that will allow the Commission to more completely examine the issues raised in its Notice of Proposed Rulemaking.

Respectfully Submitted,

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Dated: July 2, 1996

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COMMENTS OF THE INTERNATIONAL TELECARD ASSOCIATION

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SUMMARY

Payphone compensation under Section 276 of the Telecommunications Act of 1996 poses unique and complex issues for the prepaid phone card industry. Debit cards, also known as "telecards," offer tremendous competitive and social benefits—including flat-rate, "unit-based" pricing and telephone alternatives for low-income and minority users—that would be directly threatened by indiscriminate application of a carrier-pays payphone compensation mechanism to telecard service providers. While prepaid phone cards should not be exempt from the compensation mandate of Section 276, ITA strongly urges the Commission to fashion a compensation system that is compatible with the extremely price competitive, and socially valuable, services provided by our members.

These comments explain the growth and competitive structure of the telecard industry and principally address Sections III(A)(2)(a)-(d) of the NPRM dealing with the mechanism for payphone compensation. ITA supports for the Commission's tentative conclusion to adopt a carrier pays compensation mechanism, provided that in the telecard context, "carrier" means the underlying, toll-free "800" access provider. This approach minimizes transaction costs, avoids unnecessary and expensive network upgrades and preserves the unique competitive and social benefits of telecards, while ensuring that payphone providers are fairly compensated. The Commission should make clear that a "completed" call for payphone compensation purposes is one in which the calling party is connected to the called party, not merely an intermediate call-processing switch. Ample precedent, common sense and legislative history support this conclusion.

ITA proposes that to implement this approach the "800" access provider would compensate payphone providers for all completed non-coin calls. Telecard service providers would provide a measure of the percentage of completed telecard calls to toll-free "800" service providers, who would adjust payphone provider compensation accordingly, simlar to the "PIU" process applied to Feature Group A & B access services.

An adequate transition period must be provided for industry to implement necessary changes prior to the effective date of the Commission's rules. This time is needed to allow debit cards already paid for to be used, to ensure that carrier common line charge reductions are coincident with new payphone compensation charges, and to allow time for network upgrades and administrative changes.

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Pay Telephone Reclassifications	)	
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF THE INTERNATIONAL TELECARD ASSOCIATION

The International Telecard Association ("ITA"), by its attorneys, respectfully submits these comments on the Notice of Proposed Rulemaking ("NPRM")[1] released by the Federal Communications Commission ("Commission") in the captioned proceeding.

INTRODUCTION

ITA is the leading trade association representing providers of pre-paid telephone calling cards, commonly known as "telecards" or "debit cards." ITA's members include five of the seven Regional Bell Operating Companies and major interexchange carriers ("IXCs"), as well as more than 100 of the smaller, entrepreneurial companies that have made telecards the fastest growing and most consumer-friendly form of telephone service in the United States telecommunications marketplace.[2]

Payphone compensation under Section 276 of the Telecommunications Act of 1996 poses unique and complex issues for the telecard industry that the Commission's

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[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, FCC 96-254, CC Docket No. 96-128 (released June 6, 1996)("NPRM").

[2] A list of ITA member companies is attached as Exhibit A.

NPRM does not address. Telecards offer tremendous competitive and social benefits—including flat-rate, "unit-based" pricing and telephone alternatives for low-income and minority users—that would be directly threatened by indiscriminate application of a carrier-pays payphone compensation mechanism to telecard service providers. While ITA does not suggest that telecard services should be exempt from the compensation mandate of Section 276, we strongly urge the Commission to fashion a compensation system that is compatible with the extremely price competitive—and socially valuable—services provided by our members.

ITA supports the Commission's tentative conclusion to adopt a carrier pays compensation mechanism, provided that in the telecard context, "carrier" means the underlying, toll-free "800" access provider. As is the case today with Carrier Common Line ("CCL") charge-based cost-recovery, we expect that IXCs will pass along these payphone compensation charges to telecard providers in per-minute rates for "800" traffic. In this way, telecard service providers will pay their fair share for payphone usage through payment of transport rates to IXCs that, in turn, reflect payphone compensation charges. This approach minimizes transaction costs, avoids unnecessary regulatory controls and reduces administrative cost burdens on telecard service providers that otherwise threaten the commercial viability of many telecard service providers.

Section 276 limits payphone compensation to each "completed" call, and there is nothing in the 1996 Act or Commission precedent suggesting that a telecard call is "completed" when a user dials an "800" access code, but is not connected to the desired telephone number. Indeed, the Commission has clearly held that a call is "completed" only when the end user reaches the called party, not an intermediate call-processing switch.

The Act therefore requires that the Commission institute steps to account for the large proportion of telecard calls—as much as 50% or more—that are not completed. Under this approach, payphone charges to telecard service providers would need to be adjusted to reflect each carrier's proportion of uncompleted calls. ITA proposes that the Commission implement rules under which a telecard provider would certify its completion percentage to the billing payphone service provider ("PSP"), subject to verification and audit in the event of a billing dispute. This approach—similar to the Percentage of Interstate Usage ("PIU") system applied to Feature Group A & B switched access—would fairly and accurately apply compensation only to "completed" calls under the 1996 Act.

Finally, in these comments ITA demonstrates that the Commission must allow for an adequate transition period to give industry time to adapt to whatever rules the Commission adopts. Among other things, a phase-in period is needed to permit telecards already distributed—based on existing pricing structures and tariffed rates that do not account for the payphone compensation charges now under consideration—to continue to be used. Because telecard services are pre-paid and ordinarily priced at a fixed per-minute rate, imposing per-call charges on the outstanding base of telecards in circulation would destroy the simple (and consumer-friendly) pricing structure of the industry, and *require many smaller service providers to offer service at a loss.*

A transition period is also needed to allow service providers to implement network and administrative changes supporting the new rules. Furthermore, imposition of a new payphone compensation charge must coincide with the reduction in the CCL charges that currently include payphone costs. Without such a transition period and reductions in the CCL that coincide with the introduction of a new payphone compensation mechanism, unnecessary consumer hardships and confusion will result. While Congress requires the Commission to have rules in place within nine months from the adoption of the 1996 Act, it does not require that the Commission immediately impose a compensation mechanism before LECs, and interstate carriers, have deployed the necessary technical functionalities required to ensure accurate and fair payphone usage charges.

I. TELECARDS OFFER SUBSTANTIAL CONSUMER AND SOCIAL BENEFITS THAT MUST BE REFLECTED IN THE COMMISSION'S PAYPHONE COMPENSATION RULES

Telecards are relatively new and not well understood in the United States. They are a type of telephone calling card, referred to by many names, including debit cards, prepaid phone cards, prepaid calling cards and telecards.[3] As a unique, rapidly growing and highly price-competitive segment of the interstate telecommunications marketplace, telecards offer substantial consumer and social benefits that must be reflected in the Commission's payphone compensation rules.[4]

[3] The existence of these several names that for the same type of service has lead to some confusion. For instance, many banks issue debit cards, which directly bill charges to the account holder's checking or savings account, for retail purchases. In order to differentiate pre-paid telephone cards from these sorts of "debit" cards, the industry has created the term "telecard" to refer to what the NPRM terms debit cards. In these comments, "telecard" and "prepaid phone card" will be used interchangeably.

[4] The Commission seeks comment with respect to establishing public interest payphones in Section III(F) of the NPRM. ITA supports the creation of public interest payphones that support the needs of telecard users, do not impose significant adminstrative burdens and are adminstered in an equitable fashion.

A. Telecards Provide Low-Cost Alternatives for Intrastate, Interstate and International Calling that Are Not Subject to the Rate and Carrier Disclosure Abuses that Have Plagued Commission Regulation of Operator Service Providers

There are two types of telephone calling cards: telecards and "calling cards." [5] While traditional calling cards are credit cards, telecards are not. With traditional calling cards, a calling card provider, typically a LEC or IXC, extends credit to the end user. The calling card user places calls before paying for them, promises to pay for his calls, and receives a detailed itemized monthly bill, ordinarily issued to the telephone number (and account) with which the card is associated.[6] With telecards, in contrast, a telecard user pays the retailer selling the telecard before making any calls and is issued a telecard in a pre-set denomination, typically ranging from five to a hundred dollars. Each time a caller places a call using the telecard, the telecard service provider deducts, or "decrements," the applicable per-minute charge amount from the telecard. Users are given notice prior to expiration of the telecard balance, and in some instance can "replenish" the card by paying for additional usage amounts.

From a consumer perspective, telecards differ from traditional "calling cards" in two very significant ways. First, unlike traditional calling cards, telecards are available to everyone, including individuals without phone service, with poor credit histories, and users whose local or long-distance telephone service has been disconnected due to nonpayment. In this regard, the Commission has long recognized that prepaid phone

[5] Traditional calling cards are also known as "travel cards."

[6] This convention stems from the modern use of calling cards as a surrogate for user-authorized third-party line billing, which generated substantial amounts of fraudulent calling in the 1970s. Some calling cards, typically corporate cards, are not associated with telephone lines, as are certain "proprietary" calling cards issued by AT&T and several larger IXCs.

card services promote its subscribership and universal service goals by enabling "those with low incomes or non-permanent living arrangements . . . to be connected to the public switched telephone network when typical basic service connections are impracticable or unaffordable."[7] In fact, a recent survey of ITA members indicates that as many as 80% of all "utility" telecards are purchased by individuals with annual family incomes of $30,000 or less.[8] As has often been observed, one of the major problems facing the homeless in lifting their economic circumstances is the inability of a prospective employer to contact them. Many companies now offer voice mail services via telecards that address this situation.[9] Furthermore, for those consumers that have local phone service at home without long distance service—a subscribership problem the Commission is keenly aware of—telecards enable end users to place long distance calls in circumstances where traditional "post-paid" services are unavailable.

Second, rates for telecard services are substantially lower than those for calling card services. This is the case primarily because telecard users do not receive itemized bills and telecard service providers therefore do not have the expenses associated with sophisticated billing systems required for calling card services. Additionally, because telecard services are pre-paid, telecard providers do not incur the "bad debt" non-payment losses that are associated with calling cards, do not incur the cost of extending

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[7] *Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network*, 10 FCC Rcd. 13003 (1995) at ¶ 38.

[8] In one case, an ITA members has indicated that more than 35% of its telecards are issued to individuals with annual household incomes of less than $15,000. As described below, "utility" telecards are those issued for payment. "Promotional" telecards, the other major category of service offering, are distributed free to the user, with the sponsoring organization paying for telecard usage fees.

[9] In December 1995, for example, one major telecard issuer announced a program that established voice mail boxes for the homeless in several cities and distributed 10,000 free telecards to homeless people.

credit, and have minimal if no potential exposure to fraud. As a result, rates for telecard services are among the most competitive in the telecommunications industry, with per-minute prices as low as 19 cents. Coupled with the relatively low capital requirements for entry into the telecard services business, this has resulted in aggressive price competition and a situation—highly unusual in the industry—where telecard rates for major IXCs have been *forced down* to the level prevailing among smaller telecard providers.

Telecards also offer major consumer benefits compared with calling card and other services provided by Operator Services Providers ("OSPs"). In the case of OSP services, consumers have frequently had difficulty determining the presubscribed OSP serving payphone locations, and rarely can determine the rate charged for calls prior to receiving a bill for the call. This has permitted unscrupulous OSPs to charge excessive rates and has forced the Commission to repeatedly grapple over the years with OSP-related issues such as call-blocking and carrier disclosure, including the Commission's recent proposal to impose rate "benchmark" requirements on OSPs.[10] With telecards, in sharp contrast, consumers affirmatively select their desired carrier and purchase services at prices known and disclosed before placing a single call. Moreover, OSPs typically assess a service fee for calling card and other "operator-assisted" services, of as much as $1.75 per call, a pricing structure that is completely alien to the telecard industry.

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[10] *Billed Party Preference for InterLATA 0+ Calls,* Second Further Notice of Proposed Rulemaking, FCC 96-253, CC Docket No. 92-77 (released June 6, 1996).

Since telecard introduction in the United States in the early 1990s, telecard usage has grown significantly. Originally, a few large carriers offered telecards at prices significantly higher than today's telecard calling rates, and usage was limited. As additional providers, often small entrepreneurs, entered the market competition increased, prices dropped and usage began to grow. Currently, calling rates for telecard calls range from 19 to 41 cents per minute for an interstate call. Annual retail sales of telecards are estimated at over $1 billion as compared to $40 million just three years ago. A 1995 study predicts that by the year 2001, annual retail sales will exceed $5 billion. The telecard industry consists of a very diverse group of approximately 350 service providers. These service providers range from major corporations, such as AT&T, MCI and regional bell operating companies, to sole proprietorships. ITA estimates, however, that approximately 80% of the telecards sold in the United States today are issued by providers with under $20 million in capitalization.

B. Telecard Services Present Unique Technical Issues Associated With Toll-Free "800" Access, Network Functionalities and Distribution Methods

Telecards are unique in the technical manner in which service is provided, as well as the method of product distribution. There are two basic types of telecards: those that require interaction with an intermediate switch to validate telecard authenticity and to decrement the telecard account, and those that do not utilize an intermediate switch. Those that do not require interaction with an intermediate switch are known as "smart cards."

When a caller places a call using a typical telecard, he dials a toll-free "800" (or "888") number. Upon receipt of the toll-free number, the LEC conducts a database query to identify the 800 service provider associated with the number. The database query returns a carrier identification code ("CIC") that is used to select the outgoing trunk for routing the call. Because most telecard service providers are resellers leasing facilities from IXCs, the CIC returned is that of an IXC. The IXC then routes the call to the telecard service provider's network, typically using multifrequency (MF) signaling between its network and the telecard service provider's network.[11]

In doing so, the IXC may or may not provide ANI-related information to the telecard service provider. Those telecard service providers that choose not to have ANI delivered do so primarily because ANI has limited value to them, imposes additional costs, degrades performance by increasing call set up time, and in some cases is incompatible with their switching equipment or call-processing "platform.[12]

Once the call is connected to the telecard service provider's platform, the system verifies the authenticity of the telecard account, confirms that the telecard account is active (*i.e.*, there is still value remaining in the account) and then instructs the caller to enter the telephone number of the party he wishes to be connected with. Upon receiving this information, the intermediate switch routes the call to an IXC or in limited cases, a LEC network, and call routing proceeds as if it would with any telephone call. Approximately 50% of these call attempts result in a call being completed with a

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[11] MF signaling is a type of network signaling that has existed for many years. Most LECs and IXCs have replaced MF signaling with Signaling System 7 (SS7) because SS7 signaling is faster and allows carriers to offer more advanced services. The network equipment supporting SS7 signaling is significantly more expensive and complex than that for MF signaling.

[12] There are a wide variety of telecard service provider networks that vary dramatically in sophistication and complexity. Larger telecard service providers may have networks that consist of an intermediate switch, similar to switches used in LEC and IXC networks, while smaller providers' networks may simply consist of an intermediate "switch" built on a personal computer platform.

connection being established between the calling and called party. When the call is completed, the telecard service provider's intermediate switch monitors the call and decrements the appropriate value from the telecard account based on the call duration.

In the case of a call made using a smart card, the caller inserts the card into a "smart" payphone--one equipped to read magnetically encoded cards--and dials the number of the called party. The caller does not enter a toll free number as in the case of a regular telecard. Additionally, unlike the case of a regular telecard, the call is not routed to a telecard service provider intermediate switch because the smart card contains the account information and the payphone itself performs the validation and decrementing functionalities. "Smart" telecards are widely used throughout Europe and Japan, where compatible payphones are ubiquitously deployed. In the United States, however, smart cards are not widely used, as the availability of smart payphones is limited and only recently beginning to grow. In the limited cases where smart cards have been issued, they have primarily been offered by LECs that in turn have deployed limited numbers of smart payphones.

Another way of characterizing telecards is based on the method in which they were distributed. Telecards, both smart cards and regular telecards, are offered either as "utility" cards or "promotional" cards. Promotional cards are telecards that are typically given away to promote a given product or service. For example, one telecard service provider recently distributed promotional cards by affixing small denomination cards inside cereal boxes. Consumer good manufacturers and service providers also distribute promotional telecards with the purchase of their goods or services, or simply as an effective advertising method. For example, truck rental and travel agencies frequently give promotional cards to their customers with the rental of a truck or the purchase of a travel package. These cards serve a variety of functions including advertising (often the cards have pictures of company logos on them), providing a convenient way for a customer to place calls while traveling and differentiating one's product from a competitor's.

Utility cards, on the other hand, are purchased by the consumer. Originally, promotional cards were more popular than utility cards. As familiarity with telecards has grown, however, the percentage of utility cards as grown. Currently, approximately 70% of cards issued are utility cards. Utility cards are distributed through many channels including dispensers (often at airports), through phone stores, and a variety of other types of stores. Typically, the telecard service provider sells cards to a distributor, at a discount off of the "face" value of the card. Distributors, in turn, sell the cards to retailers at a mark-up, with the retailer earning as profit the difference between the card's retail value and the distributor's price. Unlike traditional post-paid telephone services, therefore, telecard service providers do not receive the full "retail" per-minute charges for their services. Moreover, at any given point, a telecard provider may have thousands, if not millions, of outstanding telecards, issued at a set price that the provider is bound to honor on both a contract and tariff basis.

II. THE COMMISSION SHOULD ADOPT A PER-CALL "CARRIER PAYS" COMPENSATION MECHANISM THAT ASSESSES CHARGES ON TOLL FREE ACCESS CARRIERS FOR ALL PAYPHONE-ORIGINATED CALLS THAT ARE COMPLETED

Section 276 of 1996 Act requires the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call." [13] In the NPRM, the Commission proposes that for non-coin payphone calls, either a "carrier-pays" system or a "set use fee" system where the end user pays would satisfy the requirements of the 1996 Act.[14] In order to minimize transaction costs, the NPRM concludes that a carrier-pays mechanism is preferable as "it would result in less transaction costs because the IXC could aggregate its payments to payphone providers."[15]

ITA supports the Commission's tentative conclusion that a carrier-pays compensation mechanism should be adopted. In the telecard context, however, it is vital that the Commission determine *which carrier* should be responsible for payment of payphone compensation. Unfortunately, although it recognized that telecard services are one component of payphone-originated calls,[16] the NPRM does not consider the unique and complex issues for the telecard industry. These consideration require that for telecards, the underlying provider of toll-free access service be responsible for payment of payphone compensation charges.

[13] 47 U.S.C. § 276(b)(1)(A). This section of the comments addresses section III(A)(2)(A) of the NPRM.

[14] NPRM ¶ 28.

[15] *Id.*

[16] NPRM ¶ ¶ 17, 39.

Imposing payphone compensation obligations directly on telecard service providers would create a number of problems for the industry, directly undermining the competitive and social benefits of this unique form of telephone service. First, because telecard services are typically offered under a fixed, "postalized" rate structure—with a set rate for each minute of use, regardless of originating location—imposing a payphone origination fee directly on telecard services would make this existing pricing all but impossible.[17] Second, as a result of the highly competitive structure of the telecard industry, most providers operate on razor-thin profit margins. Imposing payphone compensation obligations on telecard providers would necessitate significant price increase for telecard services—especially in view of the fact that telecard calls are typically of short duration, averaging four minutes or less. Finally, telecard providers, generally smaller, entrepreneurial carriers, do not have the technical capability to track and identify payphone-originated calls. Requiring most telecard providers to be responsible directly for payphone compensation charges would therefore impose substantial network and administrative costs, as well as the significant transaction costs associated with verifying and paying bills to thousands of PSPs nationwide.

These serious consequences can be avoided, and payphone providers fairly compensated for telecard calls, if the Commission requires that payphone usage fees be

[17] Indeed, to recover, for instance, a 25 cent per call fee, the typical telecard service provider would need to "decrement" several minutes of usage from a telecard. If the service provider's gross margin (the price to the distributor less the cost of underlying 800 access and switched transport) is 10 cents per minute—not atypical in this highly competitive market—the telecard provider would need to deduct 2 1/2 minutes of use to recover a 25 cent payphone charge. Thus, the consumer would actually be worse off if payphone compensation charges were imposed directly on telecard providers than if he or she were required to pay a "set use" fee by depositing a quarter into the payphone.

assessed on the underlying providers of toll-free "800" access for telecard services. While the NPRM did not explicitly address which party should pay compensation to the PSP in the telecard call context, it appears to have anticipated this result when it observed that a primary benefit of the carrier-pays mechanism would be that "IXCs could aggregate [their] payments to payphone providers."[18] Assessing payphone compensation on toll-free access providers will avoid interfering with low "unit-based" telecard pricing, eliminate the need for small telecard service providers to invest in expensive (and unnecessary) call-tracking capabilities and minimize transaction costs.

Imposing payphone compensation responsibility directly on telecard service providers would, in contrast, necessitate a degree of regulatory oversight that the NPRM suggests is inappropriate. If the Commission assesses payphone charges on telecard services, then the Commission would need to have other users of toll-free access codes, such as enhanced service providers offering voicemail via "800 accessand well-known access services such as 1-800-CALL-ATT, provide direct payphone compensation as well. Examining the ways in which parties use toll free numbers—and making a determination whether they should or should not pay direct payphone compensation—would be a regulatory nightmare. Moreover, assessing charges on

[18] NPRM ¶ 28. Furthermore, the Commission's Paperwork Reduction Act analysis appears to suggest such an approach in that its estimates for reporting requirements indicate only 275 respondents, or "IXCs who are responsibile for paying per call compensation to payphone providers" that would need to provide annual reports to payphone providers and the Common Carrier Bureau. If the Commission had intended to require telecard service providers to pay direct payphone compensation and file reports, the estimated number of respondents would need to be much higher to reflect the over 350 telecard service providers. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 61 Fed. Reg. 31481, 31482 (1996) (proposed June 4, 1996).

telecard carriers and other users of 800 access codes would require extensive regulatory oversight of many hundreds, perhaps thousands of carriers.

The network upgrades that telecard service providers would need to develop and implement if they were required to pay direct payphone compensation are significant. To provide direct payphone provider compensation, a telecard service provider would need to be able to make two determinations on each and every call: (1) whether the call came from a payphone, and (2) the specific payphone from which the call originated. To make these determinations, the telecard service provider would need to receive the complete ANI from the IXC that contains the entire ten-digit telephone number identifying the calling line.[19] Many telecard service providers do not receive ANI, nor do they have the capability to receive and process it. Telecard service providers would need expensive upgrades and in the case of smaller entities may need to replace their entire systems. Furthermore, IXCs typically charge one cent for each ANI delivered, so telecard service providers would experience additional costs. Finally, the delivery of ANI would degrade performance in that call set-up time would increase between 2 and 3 seconds on each call, even for calls not placed from payphones. These upgrades, additional expenses and performance degradation would provide extreme hardship to telecard service providers, especially smaller telecard service providers, and could drive many service providers out of business thereby depriving consumers of the unique social benefits that telecards offer.

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[19] Even with the complete ANI delivered, because there are no standard numbers for payphones (i.e., a particular range of numbers always assigned to payphones), the telecard service provider would need to maintain or access a database associating ANI information to payphones. Access to such a database does not currently exist. Additionally, the database would need to be updated regularly.

These regulatory nightmares, negative impacts on the low "unit-based" telecard pricing, excessive transaction costs and network upgrade costs can be avoided if the Commission adopts a carrier-pays approach in which the IXC providing the toll free service pays the payphone provider compensation. Already, AT&T and Sprint have a system in place that would, with limited modification, permit such an approach.[20] Because ANI information is needed for IXC billing purposes, almost all IXCs receive ANI information, and thus would not incur additional expenses associated with its receipt. In the cases of carriers other than AT&T and Sprint, the IXC would need to develop tracking software to determine if a particular ANI was from a payphone. This software, however, will be needed in any carrier-pays approach.

Assessing charges on completedtoll-free payphone calls would clearly provide fair compensation to PSPs (and, in fact, would lower their transaction and billing costs). Where the IXC that provides toll free service pays compensation to the payphone provider, ITA expects that IXCs will factor into their rates to telecard service providers the fees imposed on them for "carrier-pays" payphone usage. This is similar to what is done today with CCL charges and other payphone charges. In this way, telecard service providers will pay their fair share for payphone usage through payment of IXC charges that reflect payphone compensation charges, while minimizing additional

[20] NPRM ¶ 10.

transaction costs and avoiding the need to deploy expensive network upgrades and tracking software.[21]

III. THE COMMISSION SHOULD AFFIRM THAT A COMPLETED CALL FOR PAYPHONE COMPENSATION PURPOSES IS ONE IN WHICH THE USER ACTUALLY REACHES THE CALLED NUMBER

The 1996 Act specifies that payphone providers should receive fair compensation for "completed calls." The NPRM does not address what constitutes a completed call, either generally or in the context of telecard services.[22] ITS submits that the only sensible construction of the 1996 Act is that a "completed" call is one in which a telecard user actually reaches the called party.

The Commission has already held that a completed call is a "communication in which a conversation or exchange of information took place between the calling and called parties."[23] In *Long Distance/USA, Inc. v. Bell Telephone Company of Pennsylvania,* 10 FCC Rcd. 1634 (1995), the Commission observed that both its and court decisions "have considered the end-to-end nature of the communications more significant than the facilities used to complete such communications for defining the nature of the

[21] ITA is strongly opposed to any set use fee system where the end user pays. Adoption of such an approach would drive away many telecards users and have serious negative consequences for the telecard industry and its consumers, because one of the primary reasons consumers use telecards is to avoid the inconvenience and hassle of carrying around pocketfuls of change needed to place a payphone call.

[22] This issue was considered (but not resolved) in connection with petitions to reject Ameritech's tariff implementing its waiver of Part 69 of the Commission's rules to establish a pay telephone use rate element, *In the Matter of Ameritech Operating Companies Petition for Waiver of Part 69 of the Commission's Rules to Restructure Its Rates to Establish a Pay Telephone Use Fee Rate Element; Southwestern Bell Telephone Company Petition for Waiver of Part 69 of the Commission's Rules to Restructure Its Rates to Establish a Pay Telephone Use Fee Rate Element,* Order, DA 96-268 (Released March 1, 1996), and in any event it is settled that where the Commission permits a tariff to take effect, that decision has no substantive precedential value.

[23] 47 C.F.R. 36, App.

communications."[24] In *Long Distance/USA*, the Commission addressed whether a particular calling scenario constituted one or two calls. The calling scenario in question began by a calling party dialing an 800 number. The LEC routed the call to an IXC, which then routed the call to an intermediate switch operated by another service provider. Once the call reached the intermediate switch, the calling party entered the telephone number of the called party. The intermediate switch then routed the call to a LEC network or over private facilities to a LEC network. The LEC network then connected the calling party to the called party.[25]

The Commission easily concluded that this call arrangement constituted a single call.[26] A telecard calling scenario is nearly exactly like the *Long Distance/USA* case, in that a telecard call is only relevant where the user establishes a communication with the called party, not merely when the user reaches the telecard provider's call-processing platform. Clearly, telecard services are purchased for purposes of holding telephone conversations, not for end users to interact with the voice prompts hosted on a remote switching system. Thus, in the context of a telecard call a call cannot be considered completed until the calling party is connected to the called party, not when the calling party is connected to an intermediate switch.

The Commission has similarly concluded in the context of calls to an OSP that uncompleted calls should not be compensable. It reached this conclusion on the basis that it would not be equitable to require payments to payphone owners for calls that generated no revenue for the OSPs, and for which OSPs are not permitted to bill end

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[24] *Long Distance/USA, Inc. v. Bell Telephone Company of Pennsylvania*, 10 FCC Rcd 1634, 1637 (1995).
[25] *Id.* at 1635, 1637-38.
[26] *Id.* at 1638.

users.[27] In addition, the Commission was concerned that purposeful initiation of uncompleted calls could be used as a way to artificially increase payphone compensation.[28] Indeed, the Commission reiterated this concern in the NPRM in the context of 800 calls, noting that "a payphone owner could attach an autodialer to a payphone and have it place repeated 800 calls, which are free to the caller, in order to increase the amount of compensation that the payphone owner receives."[29]

The NPRM seeks comment on how to avoid this form of fraud.[30] In the case of telecard calls, the answer is simple. Affirm that a completed call is one that connects a calling party to a called party, not to an intermediate switch. Under this rule, because a caller may enter a PIN number or some other form of verification for the call to pass the telecard intermediate switch, a caller (or payphone owner intent on committing fraud) who obtains a toll free number for a telecard service provider would not be able to complete a call, and no payphone charges would be assessed.

Additionally, common sense supports the conclusion that a call is only completed when a calling party is connected with the called party, not the intermediate switch. It is unlikely that any caller using a telecard would believe his or her call was "completed" when connected merely to a call-processing platform, rather than the desired telephone number.

Section 276 limits payphone compensation to each "completed" call, and there is nothing in the 1996 Act or the legislative history suggesting that a telecard call is

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[27] *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensations*, Report and Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd. 4736 (1991).

[28] *Id.*

[29] NPRM ¶ 23 (citing *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Report and Order, 6 FCC Rcd. 4736, 4737 (1991)).